

which is maintained exclusively for the investment and reinvestment of monies contributed thereto by one or more bank members of such affiliated group in the capacity of trustee, executor, administrator, or guardian; *Provided, That:*

(1) The common trust fund is operated in compliance with the same state and Federal regulatory requirements as would apply if the bank maintaining such fund as any other contributing banks were the same entity; and

(2) The rights of persons for whose benefit a contributioning bank acts as trustee, executor, administrator or guardian would not be diminished by reason of the maintenance of such common trust fund by another bank member of the affiliated group;

(c) Any class of equity security which would not be outstanding 60 days after a registration statement would be required to be filed with respect thereto;

(d) Any standardized option, as that term is defined in section 240.9b-1(a)(4), that is issued by a clearing agency registered under section 17A of the Act (15 U.S.C. 78q-1) and traded on a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 780-3(a)); and

(e) Any security futures product that is traded on a national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) or on a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 780-3(a)) and cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q-1) or is exempt from registration under section 17A(b)(7) of the Act (15 U.S.C. 78q-1(b)(7)).

[30 FR 6114, Apr. 30, 1965, as amended at 43 FR 2392, Jan. 17, 1978. Redesignated at 47 FR 17052, Apr. 21, 1982; 68 FR 192, Jan. 2, 2003]

**§ 240.12h-2 [Reserved]**

**§ 240.12h-3 Suspension of duty to file reports under section 15(d).**

(a) Subject to paragraphs (c) and (d) of this section, the duty under section 15(d) to file reports required by section 13(a) of the Act with respect to a class

of securities specified in paragraph (b) of this section shall be suspended for such class of securities immediately upon filing with the Commission a certification on Form 15 (17 CFR 249.323) if the issuer of such class has filed all reports required by section 13(a), without regard to Rule 12b-25 (17 CFR 249.322), for the shorter of its most recent three fiscal years and the portion of the current year preceding the date of filing Form 15, or the period since the issuer became subject to such reporting obligation. If the certification on Form 15 is subsequently withdrawn or denied, the issuer shall, within 60 days, file with the Commission all reports which would have been required if such certification had not been filed.

(b) The classes of securities eligible for the suspension provided in paragraph (a) of this section are:

(1) Any class of securities held of record by:

(i) Less than 300 persons; or

(ii) By less than 500 persons, where the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer's three most recent fiscal years;

(2) Any class of securities of a foreign private issuer, as defined in Rule 3b-4 (§ 240.3b-4), held of record by:

(i) Less than 300 persons resident in the United States or

(ii) Less than 500 persons resident in the United States where the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer's three most recent fiscal years.

For purposes of this paragraph, the number of persons resident in the United States shall be determined in accordance with the provisions of Rule 12g3-2(a) (§ 240.12g3-2(a)); and

(3) Any class or securities deregistered pursuant to section 12(d) of the Act if such class would not thereupon be deemed registered under section 12(g) of the Act or the rules thereunder.

(c) This section shall not be available for any class of securities for a fiscal year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraphs (b)(1)(ii) and (2)(ii), the

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two succeeding fiscal years; *Provided, however,* That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

(d) The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as criteria (i) and (ii) in either paragraph (b)(1) or (2) is met on the first day of any subsequent fiscal year; *Provided, however,* That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

(e) If the suspension provided by this rule is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) by filing an annual report on Form 10-K and Form 10-KSB for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

(Secs. 12(g)(4), 12(h), 13(a), 15(d), 23(a), 48 Stat. 892, 894, 895, 901; sec. 203(a), 49 Stat. 704; secs. 3, 8, 49 Stat. 1377, 1379; secs. 3, 4, 6, 78 Stat. 565-568, 569, 570-574; sec. 18, 89 Stat. 155; sec. 204, 91 Stat. 1500; 15 U.S.C. 78l(g)(4), 78l(h), 78m(a), 78o(d), 78w(a))

[49 FR 12689, Mar. 30, 1984, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996]

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#### § 240.12h-4 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F-7, Form F-8 or Form F-80, provided that the issuer is exempt from the obligations of Section 12(g) of the Act pursuant to Rule 12g3-2(b).

[56 FR 30068, July 1, 1991]

#### § 240.12h-5 Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors.

(a) Any issuer of a guaranteed security, or guarantor of a security, that is permitted to omit financial statements by §210.3-10 of Regulation S-X of this chapter is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(b) Any issuer of a guaranteed security, or guarantor of a security, that would be permitted to omit financial statements by §210.3-10 of Regulation S-X of this chapter, but is required to file financial statements in accordance with the operation of §210.3-10(g) of Regulation S-X of this chapter, is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

[65 FR 51711, Aug. 24, 2000]

#### REGULATION 13A: REPORTS OF ISSUERS OF SECURITIES REGISTERED PURSUANT TO SECTION 12

### Annual Reports

#### § 240.13a-1 Requirements of annual reports.

Every issuer having securities registered pursuant to section 12 of the Act (15 U.S.C. 78l) shall file an annual report on the appropriate form authorized or prescribed therefor for each fiscal year after the last full fiscal year for which financial statements were filed in its registration statement. Annual reports shall be filed within the period specified in the appropriate form.

[62 FR 39767, July 24, 1997]